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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 24 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Parts 2 and 90 of the)
Commission's Rules to Provide for the)
Use of 200 Channels Outside the)
Designated Filing Areas in the)
896-901 MHz and the 935-940 MHz)
Bands Allotted to the Specialized)
Mobile Radio Pool)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
)
Implementation of Sections 3(n) and)
332 of the Communications Act)

PR Docket No. 89-553

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PP Docket No. 93-253

GN Docket No. 93-252

COMMENTS OF MOTOROLA, INC.

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May 24, 1995

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COMMENTS OF MOTOROLA, INC.

Motorola, Inc., (Motorola) hereby submits these comments in response to the Second Report and Order and Second Further Notice of Proposed Rulemaking adopted by the Commission in the above-captioned docket.¹ As detailed below, Motorola is taking this opportunity to supply data supporting the Commission's basic approach for implementing Congress's mandate that designated entities are afforded meaningful opportunities to participate in the provision of 900 MHz SMR service.

¹ Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Implementation of Sections 3(n) and 332 of the Communications Act, FCC 95-159 (released April 17, 1995) (Second Report and Order and Second Further Notice of Proposed Rulemaking) [hereinafter *Second Report and Order and Second Further Notice*].

I. Introduction and Summary.

The *Second Report and Order and Second Further Notice* in this proceeding is the latest in a series of Commission actions seeking to provide a framework for formulating rules and policies to govern future licensing of 900 MHz SMR operations.² In Motorola's view, those aspects of the *Second Report and Order and Second Further Notice* adopting final technical and operational rules for facilitating wide-area licensing in the 900 MHz SMR band represent a significant step in furtherance of the Commission's ongoing effort to promote the successful development of the 900 MHz SMR service.

In addition, the Commission has proposed several procedures intended to ensure that "designated entities" -- small businesses, rural telephone companies, and businesses owned by members of minority groups and women -- are provided sufficient opportunities to participate in 900 MHz SMR operations. In attempting to fashion rules appropriately tailored to the 900 MHz SMR context, the Commission stated its

² See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Rcd 7988, 8050-52 (1994) (Third Report and Order); Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Rcd 2863, 2871 (1994) (Further Notice); Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993) (First Report and Order and Further Notice of Proposed Rule Making); Amendment of Parts 2 and 90 of the Commission's Rules to provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, 4 FCC Rcd 8673 (1989) (Notice of Proposed Rule Making).

expectation that wide-area 900 MHz systems will require considerably less capital than Personal Communications Services (PCS) systems, thereby naturally affording greater opportunities for participation by smaller businesses, including those owned by women and minorities.³ In such respects, the Commission specifically asked commenters to discuss the projected costs associated with the acquisition, construction and operation of a 900 MHz SMR system.⁴ Motorola is submitting these comments in response to the Commission's request.

In particular, Motorola is providing data demonstrating that the estimated cost of deploying a single-site 900 MHz SMR system is \$100,000 to \$200,000, and that the estimated cost of deploying a 900 MHz SMR MTA-wide system is approximately \$2 million, depending on the size of the population. This is in marked contrast to 2 GHz broadband PCS system costs, which have been estimated to be in the range of \$100 million for initial year expenses for an MTA system. Furthermore, available evidence supports the conclusion that the Commission's proposed annual revenue limit to qualify for designated entity preferences in the 900 MHz SMR service -- \$3 million -- will reserve these benefits for truly small operators as well as women and minority-owned businesses, 99% of which have annual revenues of less than \$ 1 million.

³ *Second Report and Order and Second Further Notice* at ¶ 136.

⁴ *Id.*

II. The Proposed Preferences Appropriately Target the Particular Characteristics of the 900 MHz SMR Service.

A. Overview of 900 MHz SMR Designated Entity Proposals.

As mentioned, after examining the specific characteristics of the 900 MHz SMR service, the Commission concluded that, unlike broadband PCS and nationwide and regional narrowband PCS, the capital outlay requirements for 900 MHz SMR operations are unlikely to present significant barriers to entry by designated entities.⁵ In addition, the Commission observed that the large number of licenses being made available for 900 MHz SMR operations -- twenty in each market -- each with relatively small spectrum allocations, makes the service particularly well-suited for development by small businesses.⁶

On the basis of these considerations, the Commission tentatively concluded that the establishment of an entrepreneurs' block is unnecessary for the 900 MHz SMR service, and would be difficult, if not impossible, to implement.⁷ To ensure the participation of designated entities, however, the Commission proposed to offer a 10 percent bidding credit to small businesses bidding on any of the twenty 10-channel blocks in each Major Trading Area (MTA).⁸ In addition, the Commission proposed to adopt an installment payment option for small businesses, and to allow small businesses

⁵ *Second Report and Order and Second Further Notice* at ¶¶ 20, 136.

⁶ *Id.* at ¶¶ 130, 147.

⁷ *Id.* at ¶ 147.

⁸ *Id.* at ¶ 130.

eligible for installments to pay a reduced downpayment.⁹ For purposes of determining eligibility for these preferences, the Commission proposed to define "small businesses" (including those owned by members of minority groups, women and rural telephone companies) as entities with less than \$3 million in average gross revenues for the preceding three years.¹⁰

The Commission tentatively concluded that these proposals will ensure ample opportunity for participation by designated entities in the 900 MHz SMR service. Accordingly, it proposed not to develop separate eligibility criteria for minority and women-owned entities that do not meet the small business size standards, or to establish an enhanced bidding credit or other measures for small businesses owned by minorities and/or women.¹¹ For these same reasons, the Commission also tentatively declined to adopt a reduced upfront payment for designated entities.¹²

⁹ *Id.* at ¶¶ 133-34.

¹⁰ *Id.* at ¶ 135. The Commission premised its proposed departure from the much higher threshold used in the broadband and regional narrowband PCS context (*i.e.*, \$40 million) on the smaller amount of spectrum associated with each 900 MHz SMR license and the lower anticipated license acquisition, start-up, and build-out costs. *Id.* at ¶ 138. The Commission has proposed to consider the revenues of affiliates and certain investors in applying the small business eligibility standard, and to apply a 25 percent attribution threshold and affiliation rules similar to those used in the PCS context. *Id.* at ¶ 139.

¹¹ *Id.* at ¶ 135.

¹² *Id.* at ¶ 146. In this connection, the Commission also stated that because it was not adopting an entrepreneurs' block, a reduced upfront payment would be too costly to administer.

B. The Proposed Designated-Entity Benefits Appropriately Reflect the Characteristics of the 900 MHz SMR Service.

Motorola has collected data that verify the Commission's findings concerning the 900 MHz SMR marketplace and support the Commission's tentative conclusions with respect to the types of measures necessary to ensure that designated entities are given meaningful opportunities to participate in the provision of 900 MHz SMR service. Initially, these data support the Commission's finding that capital outlays for 900 MHz SMR operations will be significantly lower than those for broadband and nationwide narrowband PCS systems. For example, although costs vary depending on the particular technology being employed, a single-site 900 MHz SMR system generally may be installed for \$100,000 to \$200,000. A system adequate to provide service throughout an entire MTA should cost less than \$2 million. These figures are much less than the build-out costs normally anticipated for broadband and nationwide narrowband PCS systems, which are typically expected to exceed hundreds of millions of dollars.¹³ The chart set forth below illustrates the salient differences between the 900 MHz SMR service and broadband PCS, in particular:

¹³ On page 2 of its Application for an Initial Authorization in the Personal Communications Service, American PCS, L.P., d/b/a American Personal Communications (APC), states that its plans to construct and implement a broadband PCS system in the Washington/Baltimore MTA will require initial first-year expenditures of \$100 million. APC has also been quoted as estimating expenditures of \$150 to \$200 million during the initial two years to build the Washington/Baltimore system. See K. Gruneich, *Publishing Information Industry - Industry Report* at 25 (June 28, 1994). Public records indicate that Mobile Telecommunications Technology Corporation (Mtel) estimates the cost of constructing its nationwide narrowband PCS system at \$160 million.

	Broadband PCS	900 MHz SMR
Amount of Spectrum:	30 MHz	125 kHz (12.5 kHz/channel)
Estimated cost of simple single cell or site system:	\$750,000 ¹⁴	\$100,000 to \$200,000
Estimated cost of deployment for each MTA:	\$100 million in initial year	under \$2 million total

The available data also indicate that the Commission has struck an appropriate balance with its proposal to limit eligibility for qualification as a small business to entities that, in combination with their affiliates and attributable investors, have average gross revenues for the preceding three years of less than \$3 million.¹⁵ In this connection, Motorola estimates that 25 percent or more of all existing 900 MHz SMR licensees have gross revenues of less than \$3 million. As such, the proposed \$3 million threshold to qualify as a small business in the 900 MHz SMR auction will serve to target the bidding credits and other benefits to quite small businesses that nonetheless are capable of competing as SMR service providers. Furthermore, because U.S.

¹⁴ This figure is based on the Commission's estimate of the average cost of constructing a single-cell RSA system. See Amendment of the Commission's Rules for Rural Cellular Service, CC Docket No. 85-388, 4 FCC Rcd 2542, 2550 n.7 (1988) (Fourth Report and Order).

¹⁵ See *Second Report and Order and Second Further Notice* at ¶ 138.

Census data show that approximately 99 percent of all women-owned and minority-owned businesses generate net receipts of \$1 million or less, the proposed small business threshold inherently encompasses the vast preponderance of minority and female-owned businesses.¹⁶

Finally, the available information supports the Commission's tentative conclusion that entrepreneurs' blocks are unnecessary and inappropriate in the 900 MHz SMR context. The Commission's decision to adopt an entrepreneurial set-aside in the broadband PCS auctions was premised on the expectation that, absent the establishment of separate blocks on which only eligible designated entities are allowed to bid, these groups almost certainly would be outbid by a few very large telecommunications companies.¹⁷ The 900 MHz SMR service, however, is not likely to be dominated by a few large firms. As noted by the Commission, the larger number of licenses available in each market and the relatively small spectrum allocations serve to ensure ample opportunities for participation by small businesses, including minority and women-owned enterprises.¹⁸ Furthermore, Motorola agrees with the Commission's assessment that the lower capital costs associated with 900 MHz SMR

¹⁶ Moreover, as observed by the Commission, the proposed lower small business threshold, coupled with the availability of the 10 percent bidding credit on all blocks, should provide a mechanism uniquely tailored to the 900 MHz SMRS and one best suited to ensure the meaningful participation of women and minority-owned enterprises. *See Second Report and Order and Second Further Notice* at ¶ 135.

¹⁷ Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, 9 FCC Rcd 5532, 5585 (1994) (Fifth Report and Order).

¹⁸ *Second Report and Order and Second Further Notice* at ¶ 147.

operations should enhance the effectiveness of bidding credits, reduced down payments, and installment payments, thereby rendering a separate set-aside unnecessary.

III. Conclusion

For the reasons set forth above, Motorola supports adoption of the proposed preferential procedures delineated in the *Second Report and Order and Second Further Notice* as means to ensure that small businesses and businesses owned by women and minorities are given meaningful opportunities to participate in the 900 MHz SMR auction and in the provision of 900 MHz SMR services. The proposed procedures are premised on the particular characteristics of the 900 MHz SMR service and, as such, are properly tailored to that service. Consequently, adoption of the Commission's proposals will promote the public interest by providing real opportunities to designated entities while avoiding unnecessary regulatory intrusion on the development of the 900 MHz SMR service.

Respectfully submitted,

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May 24, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 1995, I caused copies of the foregoing "Comments of Motorola, Inc." to be hand-delivered to the following persons:

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